

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ERNEST ADOLF SCHAEFF, SR.,

Petitioner,

v.

DEPARTMENT OF CORRECTIONS,

Respondent.

Case No. C05-5461RBL

REPORT AND
RECOMMENDATION TO DENY
APPLICATION TO PROCEED
IN FORMA PAUPERIS

Noted for August 12, 2005

This case has been referred to Magistrate Judge Karen L. Strombom pursuant to 28 U.S.C. § 636(b)(1) and Local MJR 3 and 4. Petitioner is an inmate at the Washington State Penitentiary. He has filed a petition for writ of *habeas corpus* pursuant to 28 U.S.C. § 2254 and an application to proceed *in forma pauperis*. (Dkt. #1). Because petitioner already appears to have sufficient funds with which to pay the \$5.00 court filing fee, and because he already has paid that filing fee, the undersigned recommends the court deny the application.

DISCUSSION

The district court may permit indigent litigants to proceed *in forma pauperis* upon completion of a proper affidavit of indigency. See 28 U.S.C. § 1915(a). However, the court has broad discretion in denying an application to proceed *in forma pauperis*. Weller v. Dickson, 314 F.2d 598 (9th Cir. 1963), *cert. denied*, 375 U.S. 845 (1963).

Several district courts have ruled that denial of *in forma pauperis* status is not unreasonable when a

1 prisoner is able to pay the initial expenses required to commence a lawsuit. *See Temple v. Ellerthorpe*, 586
2 F.Supp. 848 (D.R.I. 1984); *Braden v. Estelle*, 428 F.Supp. 595 (S.D.Tex. 1977); *U.S. ex rel. Irons v.*
3 *Com. of Pa.*, 407 F.Supp. 746 (M.D.Pa. 1976); *Shimabuku v. Britton*, 357 F.Supp. 825 (D.Kan. 1973),
4 *aff'd*, 503 F.2d 38 (10th Cir. 1974); *Ward v. Werner*, 61 F.R.D. 639 (M.D.Pa. 1974).

5 By requesting the court to proceed *in forma pauperis*, petitioner is asking the government to incur
6 the filing fee because he allegedly is unable to afford the costs necessary to proceed with his petition for
7 *habeas corpus*. The six-month prison trust account statement attached to petitioner's application indicates
8 he has an average spendable balance of \$346.52.

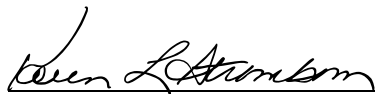
9 Given the fact that a prisoner's basic needs are provided for while incarcerated and the minimal
10 filing fee required to proceed with this action (\$5.00), it is not unreasonable to expect petitioner to pay that
11 fee from the funds he apparently has available to him from his prison trust and/or other accounts. Indeed,
12 plaintiff paid the \$5.00 court filing fee when he filed his petition and application to proceed *in forma*
13 *pauperis*. Thus, petitioner's application is moot.

14 CONCLUSION

15 Because it is reasonable to expect petitioner to incur the costs to proceed with his petition, and
16 because he in fact already has paid the court filing fee, the undersigned recommends that the court deny his
17 application to proceed *in forma pauperis* as moot.

18 Pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure ("Fed. R. Civ. P.") 72(b),
19 the parties shall have ten (10) days from service of this Report and Recommendation to file written
20 objections thereto. See also Fed.R.Civ.P. 6. Failure to file objections will result in a waiver of those
21 objections for purposes of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985). Accommodating the time limit
22 imposed by Fed. R. Civ. P. 72(b), the clerk is directed set this matter for consideration on **August 12,**
23 **2005**, as noted in the caption.

24 Dated this 15th day of July, 2005.

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28 Karen L. Strombom
United States Magistrate Judge